

**MINUTES OF THE  
ADMINISTRATIVE RULES REVIEW COMMITTEE**  
Tuesday, November 1, 2011 – 9:00 a.m. – Room C445 State Capitol

**Members Present:**

Sen. Howard A. Stephenson, Senate Chair  
Rep. Curtis Oda, House Chair  
Sen. Gene Davis  
Sen. Mark B. Madsen  
Sen. Benjamin M. McAdams  
Pres. Michael G. Waddoups  
Rep. Neal B. Hendrickson  
Rep. Carol Spackman Moss  
Rep. Merlynn T. Newbold

**Members Absent:**

Speaker Rebecca D. Lockhart

**Staff Present:**

Mr. Arthur L. Hunsaker, Policy Analyst  
Ms. Susan Creager Allred, Associate General Counsel  
Ms. Tracey Fredman, Legislative Secretary

**Note:** A list of others present, a copy of related materials, and an audio recording of the meeting can be found at [www.le.utah.gov](http://www.le.utah.gov).

**1. Committee Business**

Chair Oda called the meeting to order at 9:23 a.m.

**MOTION:** Rep. Newbold moved to approve the minutes of the October 6, 2011 meeting. The motion passed unanimously. Sen. Madsen and Sen. McAdams were absent for the vote.

**2. State Auditor Finding of Administrative Rules Violations by Department of Technology Services**

Mr. Hunsaker briefed the Committee on an audit by the State Auditor's Office which concluded that the Department of Technology Services violated state administrative rules in the awarding of incentive awards to an employee. Mr. Hunsaker referred committee members to a letter dated October 5, 2011 from the Utah State Auditor to the Department of Technology Services, which was distributed in the mailing packet.

Mr. Stephen Fletcher, Executive Director, Department of Technology Services (DTS), stated that Administrative Rule R477-6-5(1)(b) limits employee incentive awards to \$8,000 during a fiscal year, with a maximum of \$4,000 per occurrence. Mr. Fletcher said the Department sought advice from its Human Resource Manager.

Ms. Larene Wyss, Human Resource Manager, Department of Technology Services, explained that she had interpreted the word "occurrence" in the rule to mean "payment." She noted that the Auditor said the word referred to the reason for the payment, and said that her office accepts the Auditor's interpretation and will comply with the rule in the future. Ms. Wyss responded to committee members' questions and said she would discuss the rule with the Executive Director of the Department of Human Resource Management (DHRM), to determine if the rule needs to be clarified.

Sen. Stephenson asked staff to check with DHRM to see if the rule has been interpreted similarly for other agencies. He also asked for legal counsel about what recourse should be taken when a violation of the rule occurs.

Rep. Newbold said she would like DHRM to attend a committee meeting and present an explanation for the limits placed in the rule.

**3. Rulemaking Process followed by the Department of Health: R392-510 Utah Indoor Clean Air Act**

Mr. Doug Springmeyer, Assistant Attorney General, Department of Health, reviewed a letter dated October 4, 2011, from Mr. W. David Patton, Ph. D., Executive Director, Utah Department of Health

(DOH), which addressed whether the DOH had followed proper rulemaking procedures in the preparation of amendments to R392-510 Utah Indoor Clean Air Act. The letter was distributed in the mailing packet. Mr. Springmeyer reported that the legal standards for public notice were met, and he discussed the contact that took place between the state and local health departments and the Huka Bar and Grill.

Mr. Ronald Marsden, Program Manager, Environmental Services Program, Department of Health, responded to committee members' questions regarding those who participated in the fiscal impact analysis of the administrative rule.

Sen. Madsen said he would like to open a bill file to address the fiscal impact analysis performed by state agencies on administrative rules.

Rep. Newbold said she thinks the DOH expanded the intent of the Legislature in the amendments to the rule.

Mr. Bryant Porter, Huka Bar and Grill, spoke to the issue of prohibiting hookah in public places and responded to questions from the Committee.

In response to committee discussion, Mr. Springmeyer said he would inquire and report back to the Committee whether the DOH is planning to pursue legislation to change the statute so that the rule can go forward and be in compliance with statute.

#### **4. Overview of Agency Rulemaking Process**

Ken Hansen, Director, Division of Administrative Rules, distributed and reviewed "Utah Administrative Rulemaking Process." Mr. Hansen introduced Mr. Mike Broschinsky, Administrative Code Editor, and Ms. Nancy Lancaster, Editor, Division of Administrative Rules, and responded to committee members' questions about the rulemaking process and the economic cost and benefit analysis.

During committee discussion, Rep. Oda asked if it would be feasible to require the Office of the Legislative Fiscal Analyst to do a fiscal analysis of proposed rules during the rulemaking process.

Ms. Allred stated that a requirement to do a fiscal analysis of each proposed rule could be made part of the statutory functions and obligations of the Office of the Legislative Fiscal Analyst. Ms. Allred noted that the legislation would likely include a significant fiscal note.

Mr. Hansen distributed "Administrative Rule Resources Online," as a reference for committee members.

#### **5. Committee Business**

Future meetings were scheduled for November 15, 2011, at 9:00 a.m., and December 5, 2011, at 9:00 a.m.

#### **6. Adjourn**

Chair Oda adjourned the meeting at 11:36 a.m.